

SENATE BILL NO. 319

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA MAJOR FACILITY
SITING ACT; CLARIFYING THE POLICY OF THE MONTANA MAJOR FACILITY SITING ACT; ELIMINATING
GENERATION FACILITIES, UNDERGROUND IN SITU GASIFICATION OF COAL, AND OTHER
ENERGY-RELATED PROJECTS FROM THE DEFINITION OF "FACILITIES"; MODIFYING THE DEFINITION
OF "FACILITIES" AS IT RELATES TO PIPELINES; REDUCING THE TIME REQUIRED FOR THE
DEPARTMENT'S NOTIFICATION THAT AN APPLICATION IS OR IS NOT IN COMPLIANCE AND
COMPLETE; EXPEDITING DEPARTMENTAL DECISIONS AND ACTIONS CONTAINED IN OTHER LAWS;
REDUCING THE TIME REQUIRED FOR THE ISSUANCE OF A DEPARTMENTAL REPORT, THE ISSUANCE
OF A CERTIFICATE UNDER EXPEDITED REVIEW, AND THE ISSUANCE OF A FINAL DECISION AND
CERTIFICATION; GENERALLY REVISING THE DEPARTMENT'S AND BOARD'S ROLES AND AUTHORITIES;
ELIMINATING THE PROVISIONS FOR CERTIFICATE RENEWALS RELATED TO GENERATION FACILITIES;
AMENDING SECTIONS 75-20-102, 75-20-104, ~~75-20-201~~, 75-20-207, 75-20-208, 75-20-211,
75-20-216, 75-20-219, 75-20-223, 75-20-231, 75-20-301, 75-20-303, 75-20-304, AND 75-20-406,
MCA; REPEALING SECTIONS 75-20-225 AND 75-20-226, MCA; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-20-102, MCA, is amended to read:

"75-20-102. Policy and legislative findings. (1) It is the constitutionally declared policy of this
state to maintain and improve a clean and healthful environment for present and future generations, to
protect the environmental life-support system from degradation and prevent unreasonable depletion and
degradation of natural resources, and to provide for administration and enforcement to attain these
objectives.

(2) The legislature finds that the construction of additional ~~power or energy conversion~~ electric transmission facilities, pipeline facilities, or geothermal facilities may be necessary to meet the increasing need for electricity, energy, and other products and that these facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of ~~power and energy conversion~~ electric transmission facilities, pipeline facilities, or geothermal facilities will not produce unacceptable adverse effects on the environment and upon the citizens of this state by providing that a ~~power or energy conversion~~ electric transmission facility, pipeline facility, or geothermal facility may not be constructed or operated within this state without a certificate of environmental compatibility acquired pursuant to this chapter.

(3) The legislature also finds that it is the purpose of this chapter to:

- (a) ensure protection of the state's environmental resources, including but not limited to air, water, animals, plants, and soils;
- (b) ensure consideration of socioeconomic impacts;
- (c) provide citizens with the opportunity to participate in facility siting decisions; and
- (d) establish a coordinated and efficient method for the processing of all authorizations required for regulated facilities under this chapter."

Section 2. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the ~~production or~~ delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line ~~47~~ 25 inches or less in inside diameter.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Certificate" means the certificate of environmental compatibility issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection ~~(8)(c)~~ (8)(a) or ~~(8)(d)~~ (8)(b), including upgrading to a design capacity covered by subsection ~~(8)(c)~~ (8)(a), except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

~~—— (a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:~~

~~(i) generating 250 megawatts of electricity or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;~~

~~—— (ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;~~

~~—— (iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;~~

~~—— (iv) enriching uranium minerals or any addition thereto; or~~

~~—— (v) for purposes of 75-20-204 only, generating 50 megawatts of hydroelectric power or more or~~

1 ~~any addition thereto;~~
2 ~~—— (b) each plant, unit, or other facility and associated facilities generating less than 250 megawatts~~
3 ~~that would be defined in subsection (8)(a):~~
4 ~~—— (i) emitting 300 tons a year of particulate matter at 10 microns or less;~~
5 ~~—— (ii) that is not employing best available control technology pursuant to 42 U.S.C. 7479 or is not~~
6 ~~employing lowest achievable emission rates as required by Title 75, chapter 2, or rules adopted under Title~~
7 ~~75, chapter 2;~~
8 ~~—— (iii) directly affecting:~~
9 ~~—— (A) a class I airshed as designated pursuant to 42 U.S.C. 7470, et seq.;~~
10 ~~—— (B) a class I river or stream as designated pursuant to 33 U.S.C. 1251, et seq.;~~
11 ~~—— (C) habitat used by a threatened or endangered species of plant or animal as designated pursuant~~
12 ~~to 16 U.S.C. 1531, et seq.; or~~
13 ~~—— (D) one of the following exclusion areas:~~
14 ~~—— (I) national wilderness areas designated pursuant to 16 U.S.C. 1131, et seq.;~~
15 ~~—— (II) national primitive areas;~~
16 ~~—— (III) national parks as designated pursuant to 16 U.S.C. 1a-1, et seq.;~~
17 ~~—— (IV) rivers in the national wild and scenic river system as designated pursuant to 16 U.S.C. 1271,~~
18 ~~et seq.; or~~
19 ~~—— (V) national wildlife refuges and ranges as designated pursuant to 16 U.S.C. 668dd, et seq.; or~~
20 ~~—— (iv) that would require a permanent workforce greater than 300 workers;~~
21 ~~(e)(a)~~ each electric transmission line and associated facilities of a design capacity of more than
22 69 kilovolts, except that the term:
23 (i) does not include an electric transmission line and associated facilities of a design capacity of
24 230 kilovolts or less and 10 miles or less in length; and
25 (ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts
26 but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way
27 agreements or options for a right-of-way from more than 75% of the owners who collectively own more
28 than 75% of the property along the centerline;
29 ~~(d)(b)(i)~~ except pipelines within the boundaries of the state that are used exclusively for the
30 irrigation of agricultural crops, each pipeline, whether partially or wholly within the state, greater than 47

1 25 inches in inside diameter and 30 50 miles in length, and associated facilities, except that the term does
2 not include:

3 (A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of
4 agricultural crops OR FOR DRINKING WATER; or

5 (B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the
6 person planning to construct the pipeline has obtained right-of-way agreements or options for a
7 right-of-way from more than 75% of the owners who collectively own more than 75% of the property
8 along the centerline; or

9 (C) EACH PIPELINE, WHETHER PARTIALLY OR WHOLLY WITHIN THE STATE, GREATER THAN 17 INCHES IN INSIDE
10 DIAMETER AND 30 MILES IN LENGTH, AND ASSOCIATED FACILITIES USED TO TRANSPORT COAL SUSPENDED IN WATER;

11 (D) any use of geothermal resources, including the use of underground space in existence or
12 to be created, for the creation, use, or conversion of energy, designed for or capable of producing
13 geothermally derived power equivalent to 25 million Btu's per hour or more or any addition thereto, except
14 pollution control facilities approved by the department and added to an existing plant; OR

15 (E) FOR THE PURPOSES OF 75-20-204 ONLY, A PLANT, UNIT, OR OTHER FACILITY CAPABLE OF GENERATING 50
16 MEGAWATTS OF HYDROELECTRIC POWER OR MORE OR ANY ADDITION THERETO.*

17 ~~—— (f) any underground in situ gasification of coal; or~~

18 ~~—— (g) an energy-related project for which the department has granted a petition pursuant to~~
19 ~~75-20-201(5).~~

20 (9) "Person" means any individual, group, firm, partnership, corporation, limited liability company,
21 cooperative, association, government subdivision, government agency, local government, or other
22 organization or entity.

23 (10) "Transmission substation" means any structure, device, or equipment assemblage, commonly
24 located and designed for voltage regulation, circuit protection, or switching necessary for the construction
25 or operation of a proposed transmission line.

26 (11) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery,
27 or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

28

29 ~~Section 3. Section 75-20-201, MCA, is amended to read:~~

30 ~~"75-20-201. Certificate required -- operation in conformance -- certificate for nuclear facility --~~

~~applicability to federal facilities. (1) Except for a facility under diligent onsite physical construction or in operation on January 1, 1973, a person may not commence to construct a facility in the state without first applying for and obtaining a certificate of environmental compatibility issued with respect to the facility by the department.~~

~~———— (2) A facility with respect to which a certificate is issued may not be constructed, operated, or maintained except in conformity with the certificate and any terms, conditions, and modifications contained within the certification.~~

~~———— (3) A certificate may only be issued pursuant to this chapter.~~

~~———— (4) If the department decides to issue a certificate for a nuclear facility, it shall report the recommendation to the applicant and may not issue the certificate until the recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.~~

~~———— (5) A person that proposes to construct an energy-related project that is not defined as a facility pursuant to 75-20-104(8) may petition the department to review the energy-related project under the provisions of this chapter.~~

~~———— (6)(5) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all facilities over which an agency of the federal government has jurisdiction."~~

Section 3. Section 75-20-207, MCA, is amended to read:

"75-20-207. Notice requirement for certain electric transmission lines. Whenever a person plans to construct an electric transmission line or associated facilities under the provisions of ~~75-20-104(8)(c)(ii)~~ 75-20-104(8)(a)(ii), it must provide public notice to persons residing in the area in which any portion of the electric transmission facility may be located and to the department. This notice must be made no less than ~~180~~ 60 days prior to the commencement of acquisition of right-of-way by publication of a summary describing the transmission facility and the proposed location of the facility in those newspapers that will substantially inform those persons of the construction and by mailing a summary to the department. The notice must inform the property owners of their rights under this chapter concerning the location of the facility and that more information concerning their rights may be obtained from the department."

Section 4. Section 75-20-208, MCA, is amended to read:

1 **"75-20-208. Certain electric transmission lines -- verification of requirements.** (1) Prior to
2 constructing a transmission line under ~~75-20-104(8)(c)(ii)~~ 75-20-104(8)(a)(ii), the person planning to
3 construct the line shall provide to the department within 36 months of the date of the public notice
4 provided under 75-20-207, unless extended by the department for good cause:

5 (a) copies of the right-of-way agreements or options for a right-of-way containing sufficient
6 information to establish landowner consent to construct the line; and

7 (b) sufficient information for the department to verify that the requirements of ~~75-20-104(8)(c)(ii)~~
8 75-20-104(8)(a)(ii) are satisfied.

9 (2) The provisions of ~~75-20-104(8)(c)(ii)~~ 75-20-104(8)(a)(ii) do not apply to any facility for which
10 public notice under 75-20-207 has been given but for which the requirements of subsection (1) of this
11 section have not been complied with."

12
13 **Section 5.** Section 75-20-211, MCA, is amended to read:

14 **"75-20-211. Application -- filing and contents -- proof of service and notice.** (1) (a) An applicant
15 shall file with the department an application for a certificate under this chapter and for the permits required
16 under the laws administered by the department in the form that is required under applicable rules,
17 containing the following information:

18 (i) a description of the proposed location and of the facility to be built;

19 (ii) a summary of any studies that have been made of the environmental impact of the facility;

20 (iii) for facilities defined in ~~75-20-104(8)(c)~~ 75-20-104(8)(a) and ~~(8)(d)~~ (8)(b), a statement
21 explaining the need for the facility, a description of reasonable alternate locations for the facility, a general
22 description of the comparative merits and detriments of each location submitted, and a statement of the
23 reasons why the proposed location is best suited for the facility;

24 (iv) (A) for facilities as defined in ~~75-20-104(8)(c)~~ 75-20-104(8)(a) and ~~(8)(d)~~ (8)(b), baseline data
25 for the primary and reasonable alternate locations; or

26 (B) for facilities as defined in ~~75-20-104(8)(a), (8)(b), (8)(c), and (8)(f)~~ 75-20-104(8)(c), baseline
27 data for the proposed location and, at the applicant's option, any alternative locations acceptable to the
28 applicant for siting the facility;

29 (v) at the applicant's option, an environmental study plan to satisfy the requirements of this
30 chapter; and

(vi) other information that the applicant considers relevant or that the department by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) must be filed with the department, if ordered, and must be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination that are physically and directly attached to each other and are operationally a single operating entity.

(3) An application must be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, county commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:

(a) environmental quality council;

(b) department of public service regulation;

(c) department of fish, wildlife, and parks;

(d) department of natural resources and conservation;

(e) department of commerce;

(f) department of transportation.

(4) The copy of the application must be accompanied by a notice specifying the date on or about which the application is to be filed.

(5) An application must also be accompanied by proof that public notice of the application was given to persons residing in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application."

Section 6. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies.

(1) After receipt of an application, the department shall within ~~60~~ 30 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and shall list the deficiencies. Upon correction of these

1 deficiencies and resubmission by the applicant, the department shall within ~~30~~ 15 days notify the applicant
2 in writing that the application is in compliance and is accepted as complete.

3 (2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and
4 this section, the department shall commence an intensive study and evaluation of the proposed facility and
5 its effects, considering all applicable criteria listed in 75-20-301, and shall issue a decision, opinion, order,
6 certification, or permit as provided in subsection (3). The department shall use, to the extent that it
7 considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled
8 by a state or federal agency.

9 (3) Except as provided for in 75-20-231, the department shall issue within ~~1-year~~ 9 months
10 following the date of acceptance of an application any decision, opinion, order, certification, or permit
11 required under the laws, other than those contained in this ~~part~~ chapter, administered by the department.
12 A decision, opinion, order, certification, or permit, with or without conditions, must be made under those
13 laws. Nevertheless, the department retains authority to make the determination required under
14 75-20-301(1)(c) or (3). The decision, opinion, order, certification, or permit must be used in the final site
15 selection process. Prior to the issuance of a preliminary decision by the ~~department~~ board and pursuant
16 to rules adopted by the department, the department shall provide an opportunity for public review and
17 comment.

18 (4) Except as provided in 75-20-231, within ~~1-year~~ 9 months following acceptance of an
19 application for a facility, the department shall issue a report that must contain the department's studies,
20 evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an
21 environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act,
22 if any. If the application is for a combination of two or more facilities, the department shall issue its report
23 within the greater of the lengths of time provided for in this subsection for either of the facilities.

24 (5) For projects subject to joint review by the department and a federal land management agency,
25 the department's certification decision may be timed to correspond to the record of decision issued by the
26 participating federal agency.

27 (6) The departments of transportation; commerce; fish, wildlife, and parks; natural resources and
28 conservation; revenue; and public service regulation shall report to the department information relating to
29 the impact of the proposed site on each department's area of expertise. The report may include opinions
30 as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds

1 obtained from filing fees to the departments making reports to reimburse them for the costs of compiling
2 information and issuing the required report."

3

4 **Section 7.** Section 75-20-219, MCA, is amended to read:

5 **"75-20-219. Amendments to certificate.** (1) Within 30 days after notice of an amendment to a
6 certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original
7 proceeding, the department shall determine whether the proposed change in the facility would result in
8 a material increase in any environmental impact of the facility or a substantial change in the location of
9 all or a portion of the facility as set forth in the certificate. If the department determines that the proposed
10 change would result in a material increase in any environmental impact of the facility or a substantial
11 change in the location of all or a portion of the facility, the ~~board shall hold a hearing in the same manner~~
12 ~~as a hearing is held on an application for a certificate. After hearing, the board~~ department shall grant,
13 deny, or modify the amendment with conditions as it considers appropriate.

14 (2) In those cases in which the department determines that the proposed change in the facility
15 would not result in a material increase in any environmental impact or would not be a substantial change
16 in the location of all or a portion of the facility, the ~~board~~ department shall automatically grant the
17 amendment either as applied for or upon terms or conditions that the ~~board~~ department considers
18 appropriate ~~unless the department's determination is appealed to the board within 15 days after notice of~~
19 ~~the department's determination is given.~~

20 ~~—— (3) If the department or the board, under subsection (4), determines that a hearing is required~~
21 ~~because the proposed change would result in a material increase in any environmental impact of the facility~~
22 ~~or a substantial change in the location of all or a portion of the facility, the applicant has the burden of~~
23 ~~showing by clear and convincing evidence that the amendment should be granted.~~

24 ~~—— (4) If the department determines that the proposed change in the facility would not result in a~~
25 ~~material increase in any environmental impact or would not be a substantial change in the location of all~~
26 ~~or a portion of the facility and a hearing is required because the department's determination is appealed~~
27 ~~to the board as provided in subsection (2), the appellant has the burden of showing by clear and~~
28 ~~convincing evidence that the proposed change in the facility would result in a material increase in any~~
29 ~~environmental impact of the facility or a substantial change in the location of all or a portion of the facility~~
30 ~~as set forth in the certificate.~~

1 (3) If a hearing is requested under 75-20-223(2), the party requesting the hearing has the burden
2 of showing by clear and convincing evidence that the department's determination is not reasonable.

3 ~~(5)~~(4) If an amendment is required to a certificate that would affect, amend, alter, or modify a
4 decision, opinion, order, certification, or air or water quality permit issued by the department or board, the
5 amendment must be processed under the applicable statutes administered by the department or board."
6

7 **Section 8.** Section 75-20-223, MCA, is amended to read:

8 **"75-20-223. Board review of department decisions.** (1) A person aggrieved by the final decision
9 of the department on an application for a certificate, ~~the renewal of a certificate,~~ or the issuance of an air
10 or water quality decision, opinion, order, certification, or permit under this chapter may within 30 days
11 appeal the decision to the board under the contested case procedures of Title 2, chapter 4, part 6.

12 (2) A person aggrieved by the final decision of the department on an application for amendment
13 or renewal of a certificate may within 15 days appeal the decision to the board under the contested case
14 procedures of Title 2, chapter 4, part 6."
15

16 **Section 9.** Section 75-20-231, MCA, is amended to read:

17 **"75-20-231. Expedited review.** (1) The department shall issue a certification decision within ~~180~~
18 120 days from the date on which an application is considered complete for a facility that:

19 (a) is unlikely to result in significant adverse environmental impacts based on the criteria listed in
20 75-20-232; or

21 (b) is presently in existence and proposed for upgrade, reconstruction, or relocation and is unlikely
22 to result in significant impacts pursuant to 75-20-232.

23 (2) A facility that qualifies for expedited review is exempt from undergoing an alternative siting
24 study, except as provided in 75-1-201."
25

26 **Section 10.** Section 75-20-301, MCA, is amended to read:

27 **"75-20-301. Decision of department -- findings necessary for certification.** (1) Within ~~45~~ 30 days
28 after issuance of the report pursuant to 75-20-216; for facilities defined in ~~75-20-104(8)(c)~~
29 75-20-104(8)(a) and ~~(8)(d)~~ (8)(b), the department shall approve a facility as proposed or as modified or
30 an alternative to a proposed facility if the department finds and determines:

- 1 (a) the basis of the need for the facility;
- 2 (b) the nature of the probable environmental impact;
- 3 (c) that the facility minimizes adverse environmental impact, considering the state of available
- 4 technology and the nature and economics of the various alternatives;
- 5 (d) in the case of an electric, gas, or liquid transmission line or aqueduct:
- 6 (i) what part, if any, of the line or aqueduct will be located underground;
- 7 (ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the
- 8 utility systems serving the state and interconnected utility systems; and
- 9 (iii) that the facility will serve the interests of utility system economy and reliability;
- 10 (e) that the location of the facility as proposed conforms to applicable state and local laws and
- 11 regulations, except that the department may refuse to apply any local law or regulation if it finds that, as
- 12 applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing
- 13 technology, of factors of cost or economics, or of the needs of consumers, whether located inside or
- 14 outside the directly affected government subdivisions;
- 15 (f) that the facility will serve the public interest, convenience, and necessity;
- 16 (g) that the department or board has issued any necessary air or water quality decision, opinion,
- 17 order, certification, or permit as required by 75-20-216(3); and
- 18 (h) that the use of public lands for location of the facility was evaluated and public lands were
- 19 selected whenever their use is as economically practicable as the use of private lands.
- 20 (2) In determining that the facility will serve the public interest, convenience, and necessity under
- 21 subsection (1)(f), the department shall consider:
- 22 (a) the items listed in subsections (1)(a) and (1)(b);
- 23 (b) the benefits to the applicant and the state resulting from the proposed facility;
- 24 (c) the effects of the economic activity resulting from the proposed facility;
- 25 (d) the effects of the proposed facility on the public health, welfare, and safety;
- 26 (e) any other factors that it considers relevant.
- 27 (3) Within ~~45~~ 30 days after issuance of the report pursuant to 75-20-216, for ~~facilities~~ a facility
- 28 defined in ~~75-20-104(8)(a), (8)(b), and (8)(c) through (8)(g)~~ 75-20-104(8)(c), the department shall approve
- 29 a facility as proposed or as modified or an alternative to a proposed facility if the department finds and
- 30 determines:

(a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant environmental impacts; or

(b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary terms, do not pose any threat of serious injury or damage to:

(i) the environment; or

(ii) the social and economic conditions of inhabitants of the affected area; or

(iii) the health, safety, or welfare of area inhabitants.

~~(4) To be considered an alternative to a proposed facility defined in 75-20-104(8)(a) and (8)(b), the alternative must:~~

~~(a) meet the objective of the applicant's proposal;~~

~~(b) be available to the applicant; and~~

~~(c) be reasonable and specific to the applicant's proposed site.~~

~~(5) Consideration of alternatives for facilities defined in 75-20-104(8)(c) and (8)(d) may not be a basis for requiring considerations of alternative sites for facilities defined in 75-20-104(8)(a) and (8)(b).~~

~~(6)~~(4) For facilities defined in 77-20-104(8), if the department cannot make the findings required in 75-20-301, it shall deny the certificate."

Section 11. Section 75-20-303, MCA, is amended to read:

"75-20-303. Opinion issued with decision -- contents. (1) In rendering a decision on an application for a certificate, the department shall issue an opinion stating its reasons for the action taken.

(2) If the department has found that any regional or local law or regulation that would be otherwise applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is unreasonably restrictive.

(3) A certificate issued by the department must include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement must include but is not limited to analysis of the following information:

(i) the environmental impact of the proposed facility; and

(ii) any adverse environmental effects that cannot be avoided by issuance of the certificate;

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified facility site between the time of certification and completion

1 of construction;

2 (d) a time limit as provided in subsection (4); and

3 (e) a statement signed by the applicant showing agreement to comply with the requirements of
4 this chapter and the conditions of the certificate.

5 (4) (a) The department shall issue as part of the certificate the following time limits:

6 (i) For a facility as defined in ~~75-20-104(8)(c)~~ 75-20-104(8)(a) or (8)(d) (8)(b) that is more than
7 30 miles in length AND FOR A FACILITY DEFINED IN 75-20-104(8)(B), construction must be completed within
8 10 years.

9 (ii) For a facility as defined in ~~75-20-104(8)(c)~~ 75-20-104(8)(a) or (8)(d) (8)(b) that is 30 miles or
10 less in length, construction must be completed within 5 years.

11 ~~—— (iii) For a facility as defined in 75-20-104(8)(a), (8)(b), and (8)(c) through (8)(g), construction must~~
12 ~~begin within 6 years and continue with due diligence in accordance with preliminary construction plans~~
13 ~~established in the certificate. (iii) FOR A FACILITY AS DEFINED IN 75-20-104(8)(C), CONSTRUCTION MUST BEGIN~~
14 ~~WITHIN 6 YEARS AND CONTINUE WITH DUE DILIGENCE IN ACCORDANCE WITH PRELIMINARY CONSTRUCTION PLANS~~
15 ~~ESTABLISHED IN THE CERTIFICATE.~~

16 (b) Unless extended ~~or renewed~~, a certificate lapses and is void if the facility is not constructed
17 or if construction of the facility is not commenced within the time limits provided in this section.

18 (c) The time limit may be extended for a reasonable period upon a showing by the applicant to the
19 department that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i)
20 and (4)(a)(ii) ~~or to begin construction under subsection (4)(a)(iii).~~ Under this subsection, a good faith effort
21 includes the process of acquiring any necessary state or federal permit or certificate for the facility and
22 the process of judicial review of a permit or certificate."
23

24 **Section 12.** Section 75-20-304, MCA, is amended to read:

25 **"75-20-304. Waiver of provisions of certification proceedings.** (1) The department may waive
26 compliance with any of the provisions of 75-20-216 and this part if the applicant makes a clear and
27 convincing showing to the department at a public hearing that an immediate, urgent need for a facility
28 exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in
29 advance to fully comply with the provisions of 75-20-216 and this part.

30 (2) The department may waive compliance with any of the provisions of this chapter upon receipt

1 of notice by a person subject to this chapter that a facility or associated facility has been damaged or
2 destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other
3 civil disorder and there exists an immediate need for construction of a new facility or associated facility
4 or the relocation of a previously existing facility or associated facility in order to promote the public
5 welfare.

6 (3) The department shall waive compliance with the requirements of 75-20-301(1)(c), (2)(b), and
7 (2)(c) and the requirements of 75-20-211(1)(a)(iii) and (1)(a)(iv) and 75-20-216(3) relating to consideration
8 of alternative sites if the applicant makes a clear and convincing showing to the department at a public
9 hearing that:

10 (a) a proposed facility will be constructed in a county where a single employer within the county
11 has permanently curtailed or ceased operations, causing a loss of 250 or more permanent jobs within 2
12 years at the employer's operations within the preceding 10-year period;

13 (b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be
14 located support by resolution the waiver;

15 (c) the proposed facility will be constructed within a 15-mile radius of the operations that have
16 ceased or been curtailed; and

17 (d) the proposed facility will have a beneficial effect on the economy of the county in which the
18 facility is proposed to be located.

19 (4) The waiver provided for in subsection (3) applies only to permanent job losses by a single
20 employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal
21 nature, including but not limited to construction jobs or job losses during labor disputes.

22 (5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or
23 minimum adverse environmental impact for a facility defined in ~~75-20-104(8)(c), (8)(d), (8)(e), or (8)(f),~~
24 75-20-104(8)(a) or (8)(b) or for an associated facility defined in 75-20-104(3); ~~or for any portion of or~~
25 ~~process in a facility defined in 75-20-104(8)(a) or (8)(b) to the extent that the process or portion of the~~
26 ~~facility is not subject to an air or water quality permit issued by the department.~~

27 (6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver
28 request under subsection (3). However, any payments made under this subsection must be credited
29 toward the fee paid under 75-20-215 to the extent that the data or evidence presented at the hearing or
30 the decision of the department under subsection (3) can be used in making a certification decision under

1 this chapter.

2 (7) The department may grant only one waiver under subsections (3) and (4) for each permanent
3 loss of jobs as defined in subsection (3)(a)."

4

5 **Section 13.** Section 75-20-406, MCA, is amended to read:

6 **"75-20-406. Judicial review of board decisions.** (1) A person aggrieved by the final decision of
7 the board on an application for a certificate may obtain judicial review of that decision by the filing of a
8 petition in a state district court of competent jurisdiction.

9 (2) The judicial review procedure is the procedure for contested cases under the Montana
10 Administrative Procedure Act.

11 ~~—— (3) When the applicant is granted a permit or certification, with or without conditions, pursuant~~
12 ~~to the laws administered by the department and the board and this chapter, the decision may be appealed~~
13 ~~only in conjunction with the final decision of the board as provided in 75-20-232 and subsections (1) and~~
14 ~~(2) of this section. If an air or water quality permit or certification is denied by the department or the~~
15 ~~board, the applicant may:~~

16 ~~—— (a) appeal the denial under the appellate review procedures provided in the air and water quality~~
17 ~~laws administered by the department and the board; or~~

18 ~~—— (b) reserve the right to appeal the denial by the department or the board until after the board has~~
19 ~~issued a final decision as provided in 75-20-232.~~

20 ~~—— (4) This section may not be construed to prohibit the board from holding a hearing as provided~~
21 ~~in this section on all matters that are not the subject of a pending appeal by the applicant under subsection~~
22 ~~(3)(a)."~~

23

24 NEW SECTION. **Section 14. Repealer.** Sections 75-20-225 and 75-20-226, MCA, are repealed.

25

26 NEW SECTION. **Section 15. Saving clause.** [This act] does not affect rights and duties that
27 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
28 act].

29

30 NEW SECTION. **Section 16. Effective date.** [This act] is effective on passage and approval.

1

2 NEW SECTION. **Section 17. Applicability.** [This act] does not apply to any facility OR ASSOCIATED
3 FACILITY under 75-20-104(8)(a), (8)(b), (8)(D), or (8)(f), as those subsections read on THE DAY BEFORE [the
4 effective date of this act], that was subject to a certificate of environmental compatibility on [the effective
5 date of this act].

6

- END -